COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO STOWE WOODWARD LLC EPA ID No. VAD070360086

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Stowe Woodward LLC, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Site" means the Stowe Woodward LLC Facility located at 8207 Valley Pike in Middletown, Virginia.

6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

8. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

11. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.

12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

14. "Stowe Woodward" means Stowe Woodward LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Stowe Woodward is a "person" within the meaning of Va. Code § 10.1-1300/§ 10.1-1400/§ 62.1-44.3. [*Note: An LLC is not a corporation.*]

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

18. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Stowe Woodward owns and operates the Facility in Middletown, Virginia. The Facility manufactures roll coverings for the paper and textile industries. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. Stowe Woodward submitted a RCRA Subtitle C Site Identification Form, received August 10, 1983, that gave notice of regulated waste activity at the Facility as a generator of hazardous waste. Stowe Woodward was issued EPA ID No. VAD070360086 for the Facility. In a subsequent form, received April 15, 2004, Stowe Woodward gave notice as an LQG of hazardous waste and a Small Quantity Handler of Universal Waste at the Facility.

3. At the Facility, Stowe Woodward generates the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. Hazardous wastes, including those listed below, are accumulated in containers at the Facility after generation.

   Petroleum Naphtha – D039
   Epoxy resin, MEK – D001, D035, F005
   Toluene, Mineral Spirits – F005, D035
   Toluene Diisocyanate - D003
   Monoethanolamine – D006, D008, D018, D027, D039, D040

   Stowe Woodward is a Small Quantity Handler of Universal Wastes.

4. On May 23, 2013, DEQ staff conducted a compliance inspection of the Facility in Middletown, Virginia. Staff also reviewed documents provided to DEQ during the course of the inspection. The following describe the staff's factual observations and identify the applicable legal requirements:

   a. Upon inquiry by the inspector, the Facility provided information on an exothermic reaction that occurred on April 25, 2013. Normal process operation generates a partially reacted Epoxy/MEK hazardous waste which is accumulated in 55 gallon drums and shipped offsite. A deviation from normal operation occurred when an operator discarded an out of date accelerator by pouring it into a hazardous waste drum containing partially reacted waste Epoxy/MEK, located in the Composite Wrap satellite accumulation area. Mixing of these two incompatible wastes caused a violent reaction that resulted in the release of uncontrolled fumes that threatened human health, and prompted evacuation of the building. Frederick County Fire Department and Virginia Department of Emergency Management responded to the incident.

      40 CFR 265.173(b) as incorporated in 9 VAC 20-60-265 requires that a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

40 CFR 265.177(a) as incorporated in 9 VAC 20-60-265 requires that incompatible waste or materials must not be placed in the same container.

40 CFR 265.17(b) as incorporated in 9 VAC20-60-265 requires that the storage of ignitable or reactive waste, and the mixture or commingling of incompatible waste, or incompatible waste and materials must be conducted so that it does not

1. Generate extreme heat or pressure, fire or explosion, or violent reaction
2. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health.

b. Weekly inspections of container storage areas were not being performed. The facility was unable to provide records for 15 weeks during the past three years.

40 CFR 265.174 as incorporated in 9 VAC 20-60-265 requires that at least weekly, the owner or operator must inspect areas where containers are stored.

c. Signed manifests from the designated facility that received waste were not available for DEQ review for the following dates/manifest numbers:

February 23, 2012 - #003420866
April 29, 2012 - #003386755
May 23, 2012 - #011016658
August 13, 2012 - #003420865
November 6, 2012 - #011016377

Stowe Woodward did not contact the RCRA disposal facility to determine the status of the hazardous waste. Stowe Woodward did not file an exception report with EPA Regional Administrator for hazardous waste shipments for which they had not received signed manifests from the RCRA disposal facility 45 days after transport.

40 CFR 262.40(a) as incorporated in 9 VAC 20-60-262 requires that a "generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter."

40 CFR 262.42(a)(1) as incorporated in 9 VAC 20-60-262 requires that a generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the designated facility to determine the status of the hazardous waste.

40 CFR 262.42(a)(2) as incorporated in 9 VAC 20-60-262 requires that a generator must submit an exception report to the EPA Regional Administrator for

the region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.

d. A 55 gallon drum that contained waste solvent rags, located at the point of generation, was not labeled with the words "Hazardous Waste" or other words that identify the contents of the containers.

   40 CFR 262.34(c)(1)(ii) as incorporated in 9 VAC 20-60-262 requires that a generator may accumulate as much as a 55 gallons of hazardous waste in containers at or near the point of generation provided that the containers are marked with the words "Hazardous Waste" or other words that identify the contents of the containers.

e. More than 55 gallons of waste were stored in two separate satellite accumulation areas. Two 55 gallon drums, one completely full and one partially full, of hazardous waste were located in the main aisle satellite accumulation area (near the farrel grinder). Two 55 gallon drums, one completely full and one partially full, of hazardous waste were located in the Composite Wrap satellite accumulation area. The two partially filled containers were not marked with the date that the excess accumulation began.

   40 CFR 262.34(c)(1) as incorporated in 9 VAC 20-60-262 requires that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste.

   40 CFR 262.34(c)(2) as incorporated in 9 VAC 20-60-262 requires that a generator who accumulates hazardous waste in excess of the amounts listed in (c)(1) must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

f. Universal Waste (lamps) located in the boiler room were stored in an open container. Waste lamp containers were not labeled with the words "Universal Waste Lamps" or "Waste Lamps." Waste lamp containers were not marked with the date that lamps became a waste.

   40 CFR 273.13(d)(1) as incorporated in 9 VAC 20-60-273 requires that "A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

   40 CFR 273.14(e) as incorporated in 9 VAC 20-60-273 requires that "Each lamp

or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)"."

40 CFR 273.15(c) as incorporated in 9 VAC 20-60-273 requires that a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

5. On June 19, 2013, DEQ issued NOV No. WS-13-06-VRO-002 to Stowe Woodward for the violations listed in paragraph 4, above.

6. On July 8, 2013, DEQ staff met with Facility representatives to discuss the NOV. The Facility representatives stated that the waste streams that were mixed on April 25, 2013, resulting in an exothermic reaction, were materials that were normally sent to the same waste container from the process. However, the addition of the accelerator (catalyst) changed the ratio of the two materials, resulting in an exothermic reaction. Copies of the signed manifests in 2.d, above, were provided. Facility representatives stated that the manifests were located at the facility but had been routed to incorrect employee mailboxes. It was reported that Stowe Woodward had resumed performing weekly inspections and facility representatives stated that new containers had been ordered for the universal waste lamps.

7. Based on the results of the May 23, 2013 inspection and the July 8, 2013 meeting, the Board concludes that Stowe Woodward has violated 40 CFR 265.173(b), 40 CFR 265.177(a), 40 CFR 265.17(b), 40 CFR 265.174, 40 CFR 262.40(a), 40 CFR 262.42(a)(1), 40 CFR 262.42(a)(2), 40 CFR 262.34(c)(1)(ii), 40 CFR 262.34(c)(1), 40 CFR 262.34(c)(2), 40 CFR 273.13(d)(1), 40 CFR 273.14(e) and 40 CFR 273.15(c) as described in paragraphs C(4) through C(6), above.

8. Stowe Woodward has submitted documentation that verifies that the violations described in paragraphs C(4) through C(6), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Stowe Woodward, and Stowe Woodward agrees to:

1. Pay a civil charge of $23,250 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 1104
Richmond, Virginia 23218

Stowe Woodward shall include its Federal Employer Identification Number, 42-1558674, with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Stowe Woodward shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Stowe Woodward for good cause shown by Stowe Woodward, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No.WS-13-06-VRO-002 dated June 19, 2013. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Stowe Woodward admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. Stowe Woodward consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Stowe Woodward declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Stowe Woodward to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Stowe Woodward shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Stowe Woodward shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Stowe Woodward shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Stowe Woodward. Nevertheless, Stowe Woodward agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

   a. The Director or his designee terminates the Order after Stowe Woodward has completed all of the requirements of the Order;

   b. Stowe Woodward petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

   c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Stowe Woodward.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Stowe Woodward from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Stowe Woodward and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Stowe Woodward certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Stowe Woodward to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Stowe Woodward.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Stowe Woodward voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

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Stowe Woodward LLC voluntarily agrees to the issuance of this Order.

Date: Oct 30, 2013 By: Dennis Negrin, _____
Dennis Negrin Plant Manager
Stowe Woodward LLC

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 30 day of October, 2013, by Dennis Negrin who is Plant Manager of Stowe Woodward LLC, on behalf of the company.

Kathleen Anne Baker
Notary Public

7240434
Registration No.

My commission expires: 7-31-17

Notary seal:

Kathleen Anne Baker
Commonwealth of Virginia
Notary Public
Commission No. 7240434
My Commission Expires 7/31/2017